



A.S.(MD)No.122 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.04.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

A.S.(MD)No.122 of 2017

1.C.Ramakrishnan

2.Vijayalatha

... Appellants /
Defendants

Vs.

1.Y.Victor (died)

2.D.V.Mercy

3.Caroline

4.Arul Yagapa

5.Maria Durai

... Respondents /
Plaintiffs

Prayer : Appeal Suit filed under Order 41 Rules 1 & 2 r/w Section 26 of Civil Procedure Code against the judgment and decree passed in O.S.No. 143 of 2008 on the file of II Additional District and Sessions Judge, Thanjavur dated 22.12.2014.



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A.S.(MD)No.122 of 2017

For Appellants : Mr.M.P.Senthil

For Respondents : Mr.Raguvaran Gopalan
for Mr.G.Mohan Kumar
for R.2 to R.5

R.1 - Died

JUDGMENT

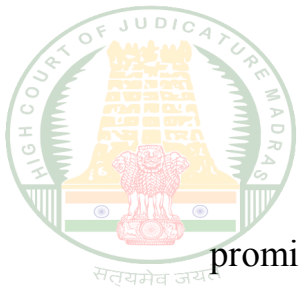
(Judgment of the Court was made by G.R.Swaminathan J.)

Heard both sides.

2.The defendants in O.S.No.143 of 2008 on the file of II Additional District and Sessions Judge, Thanjavur are the appellants herein. The appeal arises out of suit on pronotes.

3.The suit was instituted by one Y.Victor. The appellants herein had jointly executed as many as 4 pronotes (Ex.A1 dated 27.05.2007, Ex.A2 dated 03.06.2007, Ex.A3 dated 09.06.2007 and Ex.A4 dated 11.06.2007). The total sum covered by these 4 pronotes was Rs. 19,00,000/- (Rupees Nineteen Lakhs). The defendants had agreed and

2/9



A.S.(MD)No.122 of 2017

promise to repay the borrowed amount with the interest at the rate of 12% per annum. The first defendant / first appellant herein had issued 3 cheques, while the second defendant issued one cheque for a total value of Rs.19,00,000/- towards borrower. But the cheques were dishonoured on being presented. Hence, Victor issued legal notices dated 15.09.2008 and 22.09.2008 (Ex.A5 and Ex.A6). A reply notice was issued by the defendant on 29.09.2008 (Ex.A10). Since the demand set out in the legal notices was not complied with, O.S.No.143 of 2008 came to be instituted. The appellants filed written statement admitting receipt of Rs.21,00,000/- (Rupees Twenty One Lakhs only) claimed to have repaid the said amount. Based on the rival pleadings, the Court below framed the necessary issues.

4.Y.Victor examined himself as PW1. Sadiq attestor of the pronotes was examined as PW.2. Ex.A1 to Ex.A13 were marked. The first defendant / Ramakrishnan examined himself as DW1. Ex.B1 to Ex.B6 were marked. After considering the evidence on record, the trial Court passed the judgment and decree dated 23.12.2014, decreeing the suit as prayed for. It is relevant to note that the operative portion of the



A.S.(MD)No.122 of 2017

judgment stops with that. However, in the decree it has been specifically directed that the defendants shall pay a sum of Rs.22,13,866/- (Rupees Twenty Two Lakhs Thirteen Thousand Eight Hundred and Sixty Six only) to the plaintiffs with subsequent interest on 12% per annum on the principal amount of Rs.19,00,000/- from the date of plaint till the date of decree and to subsequent interest at the rate of 6% per annum from the date of decree till date of realization. Normally, these directions should have found place in the judgment itself. Because the decree is supposed to be in strict consonance with the terms of the judgment. Aggrieved by the same, the defendants have filed this appeal.

5.The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds of appeal. According to him, the Court below ought to have sustained and upheld the defendants' claim of set-off. He drew our attention to Ex.B3 and Ex.B4 account note books which were maintained in the regular course of their business. If Ex.B3 and Ex.B4 had been carefully appreciated, the Court below would have come to the conclusion that the borrowed amount had been repaid. He also would point out that it was the



A.S.(MD)No.122 of 2017

defendants who fired the first shot. Ex.B1 is the newspaper advertisement published in Thinathanthi on 26.08.2008. Ex.A7 is the copy of the notice issued by the defendants to the plaintiff on 18.08.2008. Only thereafter, the plaintiff issued notices and also instituted the suit. According to the learned counsel appearing for the appellants, this shows the bona fide contact on the part of the appellants.

6.Per contra, the learned counsel appearing for the plaintiffs submitted that the impugned judgment is well reasoned and that it does not call for interference.

7.We carefully considered the rival contentions and went through the evidence on record.

8.The point that arises for determination is whether the defendants established their plea of discharge. During the pendency of the suit, the plaintiff Victor passed away and his legal heirs had come on record during the trial itself. In the written statement filed by the defendants, the following averments are found:



A.S.(MD)No.122 of 2017

WEB COPY

“5. The plaintiff volunteered to advance money to these defendants, so that they can pay the distributors as and when new pictures are released. Accordingly a sum of Rs.1,50,000/- was paid to these defendants on 09.01.2007, Rs.11 lakhs on 11-6-07 and Rs.9 lakhs on 13-6-2007. By way of security for the due repayment of these amounts, these defendants were asked to execute Blank Promissory notes, one at the time of receipt of 1,50,000/ and two each at the time of receipt of 10 lakhs and 9 lakhs respectively, and Blank cheques simultaneously. It was mutually agreed upon that these defendants should repay the amounts mentioned above periodically along with a reasonable interest. In view of the cordial relationship that prevailed between these defendants and the plaintiff, these defendants did not suspect that the Blank Promissory notes and cheques will be misused by him.”

It can be seen from the above pleading in the written statement as well as the testimony of DW1 that the signatures found in the suit pronote Ex.A1 to Ex.A4 are not denied. Of course, the learned counsel appearing for the appellants would contend that the pronotes are in a stereotyped format and appear to have been subsequently filled up.



A.S.(MD)No.122 of 2017

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9.In fact, Section 20 of the Negotiable and Instruments Act, 1881 enables the holder to fill up inchoate instruments. Provided, of course, it should not be beyond liability of the drawer. Therefore, we do not find any merit in the contention that the pronote has been subsequently filled up by the plaintiff.

10.In fact, the defendants have fairly conceded the borrowal. While the plaintiff would claim that a sum of Rs.19,00,000/- was advanced, the defendants would claim that a sum of Rs.21,00,000/- was borrowed. Therefore, the only point that is to be considered is whether the plea of discharge had been made good. The sum involved is really substantial. Therefore, the defendants ought to have obtained receipt from the plaintiffs as and when any amount was paid. Once a pronote had been settled in full, it ought to have been cancelled then and there. No such course of action appears to have been adopted. The only evidence relied on by the defendants are the contents of Ex.B3 and Ex.B4. Both these account note books were maintained only by the defendants. There is nothing on record to show that they were



A.S.(MD)No.122 of 2017

maintained in due course of business. The Court below had also pointed out that the contents of Ex.B3 and Ex.B4 have not been proved in the manner known to law. The persons who made the entries were not examined as witnesses. Therefore, we are of the view that the entries in Ex.B3 and Ex.B4 are self serving entries. No reason has been made out to interfere with the well considered decision of the trial Court.

11.This Appeal Suit stands dismissed. No costs.

(G.R.S. J.) & (M.J.R. J.)
17.04.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To:

II Additional District and Sessions Judge,
Thanjavur.

Copy to:

The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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A.S.(MD)No.122 of 2017

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and

M.JOTHIRAMAN, J.

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